

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 20, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 220, 1/20/2003; HB 14,
1/20/2003; HB 40, 1/20/2003; HB
166, 1/20/2003; HB 170, 1/20/2003;
HB 171, 1/20/2003

Executive Action: HB 141; HB 170

HEARING ON HB 14

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Opening Statement by Sponsor:

REP. SHOCKLEY opened on HB 14 stating this bill would amend Article II, Section 24 of the Montana Constitution. He explained this bill would allow the defendant to have only one, not two, jury trials for a misdemeanor. He stated this process has been abused by lawyers using the first trial as basically a mock trial at JP court in preparation of a district court trial. The bill would allow a defendant only one jury trial which could be used either at the court of limited jurisdiction or reserve it for the district court.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 31}

Proponents' Testimony:

George Corn, Ravalli County Attorney, supported HB 14. He stated this bill would withstand constitutional scrutiny. He stated this bill is supported by victim's groups, the courts, and law enforcement.

{Tape: 1; Side: A; Approx. Time Counter: 32 - 70}

John Connor, Attorney General's Office (AG), Department Of Justice (DOJ), supported HB 14. He stated allowing two jury trials on misdemeanors is a drain on the court and public defender systems. The Court mandated looking at the Constitution as a way of dealing with this issue.

{Tape: 1; Side: A; Approx. Time Counter: 71 - 84}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked Mr. Connor to explain the purpose of two-jury trials. Mr. Connor responded that the law provides for a trial de novo. He explained that the first attempt to do away with two jury trials was to make justice court a court of record, but it got killed because the district court did not want the cumbersome task of reviewing tapes.

{Tape: 1; Side: A; Approx. Time Counter: 85 - 107}

Closing by Sponsor:

REP. SHOCKLEY closed on HB 14 stating that this should be changed. He explained this is not a perfect fix but that it is a good start and that a person should have one fair jury trial.

{Tape: 1; Side: A; Approx. Time Counter: 110 - 130}

HEARING ON HB 220

Sponsor: REP. JEFF LASZLOFFY, HD 22, Laurel

Opening Statement by Sponsor:

REP. LASZLOFFY opened on HB 220 stating it seeks to overhaul Montana's victim restitution statutes. He explained this bill would help to ensure a defendant's duty to pay by giving the state additional tools to recover restitution on behalf of victims.

{Tape: 1; Side: A; Approx. Time Counter: 131 - 171}

Proponents' Testimony:

Diana Koch, Chief Legal Counsel, Department of Corrections (DOC), supported HB 220. Ms. Koch stated that section 1 of the bill corrects a drafting error made in the 1999 session. The Court pointed out the drafting error in State v. Horton, stating the Legislature did not amend the subsection on restitution. Hence, under the current law, a district court can only require restitution in cases involving deferred imposition of a sentence, not in cases involving suspended execution of a sentence. Ms. Koch stated section 2 of the bill clarifies that the obligation to pay remains with the offender until it is paid or the offender dies. She stated section 2 also has the DOC, instead of clerks of court, collect felony restitution. Sections 3 and 4 allow the prosecution and defense to negotiate and plea bargain restitution. She concluded, stating that Sections 5 through 7 explain mechanisms for collecting restitution.

{Tape: 1; Side: A; Approx. Time Counter: 172 - 265}

EXHIBIT (juh11a01)

Steve Hollingshead, Laurel, supported HB 220. He stated his family lost their child in an accident involving a drunk driver. He stated their savings account was drained as the driver did not have insurance. He stated although the court ordered the defendant to pay \$18,000 in restitution, he never did pay the victims.

{Tape: 1; Side: A; Approx. Time Counter: 266 - 322}

Leo Gallagher, County Attorney's Association, Helena, supported HB 220 on his own behalf and that of the County Attorney's Association. He stated the present restitution situation is a big problem and this bill will help fix it. He explained the definition of victim has been expanded in this bill. He stated this bill will allow the restitution to be garnished from income tax returns.

{Tape: 1; Side: A; Approx. Time Counter: 323 - 385}

Mathew Dale, Director Victim Services, DOJ, supported HB 220. He stated his office has a full-time employee to collect restitution, and this bill will greatly assist that person. He explained many of the expenses of victims go beyond sentencing, and this bill will help pay those expenses.

Kit Hunter, Kalispell, supported HB 220. He stated he is the victim of the Pritchett case. He explained that the defendant, Mr. Pritchett, broke into Mr. Hunter's garage and accidentally blew it up during an attempted theft. **Mr. Hunter** stated the court ordered \$63,000 restitution in 1998 but he has only received \$1200. He stated his frustration in the state's inability to collect restitution on his behalf.

{Tape: 1; Side: A; Approx. Time Counter: 386 - 512}

{Tape: 1; Side: B; Approx. Time Counter: 1 - 3}

Beth Satre, Montana Coalition Against Domestic and Sexual Violence, supported HB 220.

{Tape: 1; Side: B; Approx. Time Counter: 3 - 16}

Ellen Moss, Crime Victims Advisory Counsel, Shelby, supported HB 220. She stated she is also a victim, as her daughter was killed in an accident and another daughter was left in critical condition. She stated the restitution laws are ineffective and this needs to be fixed.

{Tape: 1; Side: B; Approx. Time Counter: 17 - 54}

Anita Richards, supported HB 220. She stated she is a victim of a woman incarcerated in the Montana State Prison (MSP). She stated the court ordered the defendant to pay \$68,000. She closed by saying section three should be amended to state the court must receive evidence of the victim's loss at the time of sentencing.

{Tape: 1; Side: B; Approx. Time Counter: 55 - 80}

Michael Touchette, Chief Probation Officer, DOC, supported HB 220. He stated this is a good bill for victims and makes good business sense. He stressed that section two of the bill requires the defendant to pay until it is paid or he dies. He felt that not forcing victims to have to go through the Clerk of Court to collect restitution will be a great improvement.

Opponents' Testimony: None

Informational Testimony: None

Russ Hyatt, Bureau Chief, Department of Revenue (DOR), supported HB 220. **Mr. Hyatt** explained the three amendments and stated he has gone over them with the DOC. He stated the amendments will help clarify the DOR collections and services procedures.

Questions from Committee Members and Responses:

REP. NEWMAN asked Vickie Murphy, financial specialist, DOC, about the Butte pilot project in which DOC collects restitution on behalf of Butte-Silverbow County as opposed to the courts. **Ms. Murphy** responded the biggest advantage from the victim's perspective is a continual stream of money flowing to the victims. **REP. HARRIS** asked **REP. LASZLOFFY** about extending the lien of restitution to extend beyond the life of the defendant and a mechanism to garnish gambling winnings. **REP. LASZLOFFY** responded that those would both be good amendments. **REP. HARRIS** asked **Mr. Hyatt**, DOR, the same question regarding gambling revenues for restitution. **Mr. Hyatt** responded that DOR has an offset program and money they get is from income tax refunds, but they could also target gambling proceeds. **REP. LANGE** asked **Mr. Gallagher** about amending the defendant's ability to incur new debt. **Mr. Gallagher** responded that he believes a condition of probation could state no new debts shall be incurred.

{Tape: 1; Side: B; Approx. Time Counter: 80 - 320}

REP. RICE asked **Ms. Koch** about the offender declaring bankruptcy or vanishing once off probation or parole. **Ms. Koch** stated that

case law prohibits the discharge of restitution through bankruptcy. She stated that an offender could easily disappear once off probation or parole and doesn't know of any way to prevent that from happening.

{Tape: 1; Side: B; Approx. Time Counter: 320 - 338}

REP. FACEY asked **REP. LASZLOFFY** about the retroactivity of the bill. **REP. LASZLOFFY** responded there is a retroactive clause.

REPS. CLARK, GUTSCHE, and **CHAIRMAN SHOCKLEY** asked Ms. Koch about DOC's ability to act as a collection agency beyond probation or parole and the requirement that the offender comply into the future. **Ms. Koch** responded that while on supervision, DOC has a lot of leverage in getting the offender to cooperate with restitution obligations. She stated that after supervision, the DOC could contract with collection agencies. She stated that DOC can garnish wages much like they do with child support. **CHAIRMAN SHOCKLEY** asked whether the bill provides for a the victim getting a lump sum should the offender come into some money. **Ms. Koch** responded that would be a good amendment to the bill.

{Tape: 1; Side: B; Approx. Time Counter: 348 - 514}

REP. NOENNIG asked about collection of debts of people who refuse to pay and whether the state can "get blood out of a turnip."

REP. LASZLOFFY responded that this bill will help due to the increased latitude in collecting restitution. He stated this bill will allow the DOC to work with the DOR and collection agencies. **REP. NOENNIG** asked Mr. Gallagher about the definition of "victim," whether there is causation language, and where the line is drawn as to restitution. **Mr. Gallagher** responded that a victim would be the victim of the offense and one who the offender voluntarily agrees to repay pursuant to a plea agreement.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 70}

REP. THOMAS asked about the fourth amendment: the DOR assessing a user fee, how much the fee would be, and who would pay it. Mr. Hyatt responded that the DOR may assess a fee of 10% for every dollar they collect on behalf of all state agencies.

{Tape: 2; Side: A; Approx. Time Counter: 75 - 130}

Closing by Sponsor:

REP. LASZLOFFY closed on HB 220 stating that this bill is not about money but about holding defendants accountable. He emphasized that some victims have suffered extreme personal losses for which there is no compensation. He stated that this bill also looks to recoup costs for victims of property crimes. In response to **REP. CLARK'S** assertion that the Department of Corrections is becoming the Department of Collections, he said that the pilot project in Butte has been going well and that he would provide data by the time of executive session.

{Tape: 2; Side: A; Approx. Time Counter: 131 - 254}

HEARING ON HB 166

Sponsor: REP. DAVID WANZENRIED, HD 68, Missoula

Opening Statement by Sponsor:

REP. WANZENRIED stated this bill attempts to codify a Supreme Court case rendered in 2001. He explained the proposed change to clarify a plea of guilty or nolo contendere must be accepted under certain circumstances.

Proponents' Testimony:

John Connor, Assistant Attorney General (AG), Department of Corrections (DOC), supported HB 166. **Mr. Connor** stated the bill addresses the Supreme Court case, State v. Peplo. He explained that case involved an issue of a defendant's right to plead guilty during a trial when there were several misdemeanor offenses that may have had some impact on the other offense for which the defendant was being tried. He stated the defendant was charged with several offenses and wanted to plead guilty to the lesser charges so that they wouldn't impact upon the jury's perspective about guilt on the greater charge. The Court acknowledged a general principle of statutory construction stating the word, "may" means "must" when a third person is affected. Peplo noted that there is not a constitutional right to plead guilty during trial; hence, this bill to make it statutorily possible if the prosecution consents. He stated the DOJ does not object to that and supports HB 166.

{Tape: 2; Side: A; Approx. Time Counter: 254 - 346}

George Corn, Ravalli County Attorney, supported HB 166. He stated this bill would amend the current language to reflect what the Court held in Peplo. He stated the defendant in Peplo was

charged with a fourth offense DUI felony. He added that on a fourth offense DUI, you can predict the other charges such as no insurance, driving on a suspended license, and driving under the influence. He explained that Peplo did not want the jury to know he did not have insurance or a license to drive and wanted to be tried on just the DUI. Peplo wished to plead guilty to the no insurance and no license. The court refused to accept his guilty pleas stating the statute states the court "may" accept. Peplo was convicted by the jury and he appealed. **Mr. Corn** concluded that the Court reversed the case stating "may" means "must," hence the bill before you.

{Tape: 2; Side: A; Approx. Time Counter: 346 - 432}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN SHOCKLEY commented he had no problem with Mr. Corn's proposed amendments as long as it restricts county attorney's veto power to the "Nolo" plea as opposed to a guilty plea. **Mr. Corn** stated that would not be a good compromise as it would sanitize the jury against getting the full effect of what the defendant did. **CHAIRMAN SHOCKLEY** stated he had a problem with the prosecutor having a veto over whether a person could plead guilty or not. **Mr. Corn** responded that the Court stated the guilty plea is not a Constitutional right but rather a statutory right. He stated the equities fall on the side of allowing the jury to see the full extent of the defendant's conduct rather than keeping that from the jurors. **CHAIRMAN SHOCKLEY** responded that the people who think "may" means "must" will not buy his argument. He added that for the prosecution to get the other charges in that defendant's judgment was impaired would be a 404(b).

{Tape: 2; Side: A; Approx. Time Counter: 432 - 514}

Closing by Sponsor:

REP. WANZENRIED closed on HB 166.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 38}

HEARING ON HB 171

Sponsor: **REP. JOHN PARKER, HD 45, Great Falls**

Opening Statement by Sponsor:

REP. PARKER opened on HB 171 on behalf of the DOJ. He stated this bill allows a defendant one year after final judgment to withdraw his guilty plea or a plea of nolo contendere. He explained there needs to be finality in when a defendant can withdraw a guilty plea because some defendants try to withdraw guilty pleas years after the fact. He concluded that nothing in HB 171 would prevent a defendant from seeking post-conviction relief based on a claim of innocence. He explained in a claim of actual innocence, there is no time limit, and the defendant could allege newly discovered evidence.

EXHIBIT(juh11a02)

{Tape: 2; Side: B; Approx. Time Counter: 39 - 70}

Proponents' Testimony:

John Connor, AG, DOJ, supported HB 171. He stated that the intent of HB 171 is to make withdrawing of a guilty plea consistent with the post-conviction statute of limitations, which is one year. He explained there is no finality at present. **Mr. Connor** stated that there is never a statute of limitations on a claim of actual innocence. He stated if a defendant maintains their innocence, there is no statute of limitations on withdrawing a guilty plea. He asserted this bill deals with a defendant who pleads guilty and then years down the road, wishes to withdraw for reasons other than innocence.

{Tape: 2; Side: B; Approx. Time Counter: 71 - 120}

George Corn, Ravalli County Attorney, supported HB 171, stating this is an important bill which addresses the importance of finality in cases.

{Tape: 2; Side: B; Approx. Time Counter: 121 - 134}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG asked Mr. Connor about a claim of actual innocence, and whether that language should be included in the bill. **Mr. Connor** responded that he thought that would be alright; however,

there is language already in statute on a defendant's right to withdraw a guilty plea.

REP. HARRIS asked Mr. Connor about Constitutional concerns regarding the retroactivity of the bill. **Mr. Connor** stated he understood the concern and felt amending the language would help.

{Tape: 2; Side: B; Approx. Time Counter: 135 - 182}

Closing by Sponsor:

REP. PARKER closed on HB 171.

{Tape: 2; Side: B; Approx. Time Counter: 183 - 190}

HEARING ON HB 40

Sponsor: **REP. BRAD NEWMAN**, HD 38, Butte

Opening Statement by Sponsor:

REP. NEWMAN opened on HB 40 on behalf of the DOJ. He stated this bill addresses Montana statutes on investigative stops and stop and frisks by peace officers. He stated in a recent decision, State v. Krause, the Court commented that the legislature fix the statute in this area stating the legislative intent appeared one way, and the statute another. In Krause, the defendant was found asleep in his running vehicle in the neighbor's driveway. The officer woke the defendant up and asked whether he had been drinking, and the defendant stated he had been drinking. The officer requested the usual; a driver's license and proof of insurance, and then performed field sobriety tests. **Mr. Krause** was convicted, and on appeal, he claimed the officer did not identify himself as a police officer and therefore his statements should all be suppressed.

REP. NEWMAN explained that Krause involved the following two statutes: 46-5-402, stop and frisk; and 46-5-401, investigative stop. He expressed that the legislative intent was not to require peace officers to give the warning when there is no intention to frisk. He stated the Court explained that the way the statute is written, the officer is required to identify himself and give a warning in a traffic. **REP. NEWMAN** explained that both statutes would be melded into one statute such that 402 would be repealed and 401 would become the operative provision of law. He explained that an officer needs reasonable suspicion to frisk and probable cause to arrest.

{Tape: 2; Side: B; Approx. Time Counter: 191 - 362}

Proponents' Testimony:

John Connor, DOJ, supported HB 40. He stated many jurisdictions have construed Krause differently, which has resulted in great confusion. He stated HB 40 would clarify the law in stop and frisk and investigative stops.

{Tape: 2; Side: B; Approx. Time Counter: 363 - 393}

Leo Gallagher, County Attorney, Lewis and Clark County, supported HB 40 stating it does not change Constitutional law. He explained it would not change case law such as Terry v. Ohio or Miranda v. Arizona but would do away with the "mini-miranda" requirement.

{Tape: 2; Side: B; Approx. Time Counter: 393 - 427}

Shawn Driscoll, Colonel, Montana Highway Patrol, supported HB 40. He stated that giving a "mini-miranda" would cause undue tension in a traffic stop. He stated there are different interpretations of the law across the state, and it is very confusing for the officers.

{Tape: 2; Side: B; Approx. Time Counter: 428 - 477}

Jim Kembell, Montana Association of Chiefs of Police, supported HB 40.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG stated there is a problem with the language of the bill which he will discuss later with Mr. McMaster. **REP. STOKER** told about a case where a person's handgun was taken in a routine traffic stop. He asked Mr. Connor whether this was legal. **Mr. Connor** responded that the language in the bill requires the officer to believe the person is armed and dangerous before it would trigger an arrest. He stated there was no intent to take a weapon in a routine traffic stop unless the officer believed the person was armed and presently dangerous. **REP. PARKER** commented for the record that Mr. Copenrider is a highway patrol officer.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 83}

REP. HARRIS asked why a frisk would not trigger Miranda when a frisk places a person in a custodial situation. **Mr. Gallagher**

responded that Terry v. Ohio involved suspicious people walking back and forth in front of a store in a high crime neighborhood. The cop stopped them and frisked them. The U.S. Supreme Court upheld the frisk although there was no probable cause to arrest. The cop had a particularized suspicion to believe a crime was being committed which was enough to justify the stop. Mr. Gallagher explained that this was a temporary detention, and therefore custodial but not an arrest. He cited a U.S. Supreme Court case, Barkemer v. Bacardi, which involved the stop of a DUI suspect, no Miranda, and field tests given. The Court justified the questioning and field tests because of the nature of the stop and that Miranda was not required. **REP. HARRIS** asked what would happen under new section two of the bill if the person remained silent at the request of officers. **Mr. Gallagher** stated a person has a right to remain silent but could not cite the US Supreme Court case. **Mr. Connor** stated he agreed with Mr. Gallagher that a person has a right to remain silent, and that law enforcement cannot force anyone to talk.

{Tape: 3; Side: A; Approx. Time Counter: 84 - 143}

REP. RICE asked Mr. Connor to elaborate when a person would be considered to be armed and dangerous. **Mr. Connor** stated it is entirely a matter of officer discretion based on the circumstances. In addition to the gun, the officer would have to perceive some sort of threatening behavior.

{Tape: 3; Side: A; Approx. Time Counter: 144 - 183}

REP. CLARK asked Mr. Connor about officers identifying themselves. **Mr. Connor** stated the DOJ is not trying to get around anything, and that they like the statute the way it is.

{Tape: 3; Side: A; Approx. Time Counter: 180 - 280}

REP. HARRIS asked Colonel Driscoll about a stop where the driver refuses to provide any information and whether that would trigger an arrest. **Colonel Driscoll** responded that there would be a discussion back and forth, and it comes down to the driver providing the information or be arrested for obstruction of justice.

{Tape: 3; Side: A; Approx. Time Counter: 281 - 303}

Closing by Sponsor:

REP. NEWMAN closed on HB 40. He stated Miranda requires custody and interrogation. He stated the United States Supreme Court has repeatedly ruled that a detention for a traffic stop is not

custody. He emphasized that even if it were, without interrogation, Miranda does not apply. He addressed REP. RICE's concern about the weapons, that in the absence of some furtive movement to reach for or conceal the weapon, the person would not perceive a danger. The officer cannot look under a seat of a driver without a warrant. He stated Montana has a concealed weapon statute. He stated good police practice requires the officer to identify himself; however, because it was in the statute, the Montana Supreme Court now requires it and will throw out evidence if it is not strictly adhered to. He stated to leave the statute the way it is would invite more Krause cases.

{Tape: 3; Side: A; Approx. Time Counter: 304 - 421}

HEARING ON HB 170

Sponsor: REP. JOHN PARKER, HD 45, Great Falls

Opening Statement by Sponsor:

REP. PARKER opened on HB 170 on behalf of the Department of Justice (DOJ). He stated this bill would revise the law relating to revocation of a suspended or deferred sentence by providing that recent legislative laws apply retroactively.

EXHIBIT(juh11a03)

{Tape: 3; Side: A; Approx. Time Counter: 422 - 459}

Proponents' Testimony:

John Connor, Attorney General, DOJ, supported HB 170. He stated this bill would allow the court to add or remove conditions even when there is no violation of probation. He explained that the court could add or remove conditions on a revocation hearing whether or not the court found a probation violation. In a case, State v. Brister, a sex offender who violated the conditions of his 1984 suspended sentence was allowed to stay in the community subject to new conditions that the court thought would be necessary to encourage rehabilitation and keep the community safe. Mr. Connor stated that Brister challenged the new conditions on appeal. The court held that the revocation court could not add new conditions because revocation courts did not have authority to impose new or modified conditions in 1984, when the offender was originally sentenced. He stated the court sent the case back to the revocation court to either revoke the suspension entirely and commit Brister to the DOC or continue the suspension with the conditions imposed in 1984.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked Mr. Connor about the legal or constitutional problems of adding terms at a revocation hearing which were not part of the original sentence. **Mr. Connor** responded that would raise legal problems. He stated that conditions of probation must be related to the original offense.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 70}

Closing by Sponsor:

REP. PARKER closed on HB 170.

EXECUTIVE ACTION ON HB 14

Motion: **REP. SHOCKLEY** moved that **HB 14 DO PASS.**

Discussion:

REP. RICE expressed concern that the bill is not without problems, and when you are changing the Constitution, it should be in better form as it would be very difficult to tinker with the Constitution. **REP. SHOCKLEY** responded that this is a necessary change, and that any changes in the future could be dealt with by statute. He emphasized that in order to fix the problem, the Constitution needs to be changed. **REP. NOENNIG** stated you get two trials because there is a lack of confidence in the first trial, and it is your right as a matter of law. He suggested you solve the problem by ensuring you have a good enough trial the first time around. **REP. SHOCKLEY** responded that once you become a court of record, you need to be a lawyer. He stated this is a good compromise. He expressed that the procedure should not be in the Constitution but rather in statute. **REP. GUTSCHE** asked about the part of the bill which requires the public to vote on the issue of whether to allow two jury trials. **Mr. MacMaster** responded that the language of the bill could be amended to make it more understandable.

Motion: **REP. CLARK** moved that **HB 14 BE INDEFINITELY POSTPONED without objection.**

{Tape: 3; Side: B; Approx. Time Counter: 215 - 397}

EXECUTIVE ACTION ON HB 170

Motion: REP. PARKER moved that HB 170 DO PASS.

{Tape: 4; Side: A; Approx. Time Counter: 1 - 12}

Discussion:

REPS. PARKER and NOENNIG discussed the defendant's right to appeal a revocation hearing. They discussed that if new conditions are added, they must relate to the underlying offense. John MacMaster spoke about the procedure to be applied when a revocation occurs. He explained that an act cannot be made a crime after it occurs; nor can a sentence for a crime once it has been committed. The committee discussed the ramifications if a person was convicted prior to the revocation statute. With this bill, the court could require the defendant to get an interlock ignition device. REP. PARKER stated a judge has the discretion of whether to add or remove conditions of probation. REP. HARRIS stated that he had a conceptual amendment which he wanted to discuss before he moved it. He stated page 2, line 29, would be changed to read "regardless of the date of the offender's conviction."

{Tape: 4; Side: A; Approx. Time Counter: 13 - 126}

Motion/Vote: REP. HARRIS moved that HB 170 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. PARKER moved that HB 170 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 4; Side: A; Approx. Time Counter: 135 - 150}

EXECUTIVE ACTION ON HB 141

Motion/Vote: REP. LANGE moved that HB 141 BE PULLED OFF THE TABLE. Motion to untable HB 141 carried unanimously.

Discussion:

REP. LANGE asked the Committee in the motion to pull HB 141 off the table and then amend it. He discussed what the amendment would do. REP. GALLUS spoke about making crimes a felony stating that 13 months is the basic sentence to make a crime a felony. He discussed amending the two years and inserting a 13 month sentence.

{Tape: 4; Side: A; Approx. Time Counter: 151 - 211}

Motion: REP. GALLUS moved that HB 141 BE AMENDED.

Discussion:

REP. GALLUS described the intent behind changing the sentence from two years to thirteen months as a bottom-line sentence to make a crime a felony. REP. PARKER stated he supports this bill and that car chases are very dangerous. REP. SHOCKLEY stated he would agree to a 12-month sentence but not to 13. He emphasized this should not be a felony. He explained that as it stands, it is a maximum six months with a 10-day minimum. He stated he would not make it a felony because it is already criminal endangerment when fleeing the police in a dangerous situation. He stated his concern that this bill would make 18 or 19 year old kids felons for life. He added that reckless driving already has an enhanced penalty for fleeing from the police. REP. NEWMAN responded that the reckless driving charge is 61-8-300, and the criminal endangerment is 45-5-203 or 204.

{Tape: 4; Side: A; Approx. Time Counter: 212 - 315}

REP. CLARK stated that he had no problem with the bill's intent regarding a high-speed chase after a bank robbery. He stated he was struggling over a scenario of youths who were minors in possession, and they dodged around a corner to hide from the police. He concluded that the crime of eluding the police would be bigger than the MIP.

Vote: Motion that HB 141 BE AMENDED carried 10-8 with CLARK, EVERETT, LASZLOFFY, MALCOLM, RICE, SALES, SHOCKLEY, and THOMAS voting no, by roll call vote.

Motion/Vote: REP. LANGE moved that HB 141 DO PASS AS AMENDED. Motion failed 7-11 with LANGE, FACEY, GALLUS, HARRIS, PARKER, RASER, and STOKER voting aye, by roll call vote.

Motion/Vote: REP. GALLUS moved that HB 141 BE TABLED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh11aad)